

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re AppHarvest Securities Litigation

Case No. 1:21-cv-07985-LJL

**DECLARATION OF ARIC H. WU IN SUPPORT OF DEFENDANTS' MOTION TO  
DISMISS PLAINTIFF'S SECOND CONSOLIDATED AMENDED COMPLAINT**

Pursuant to 28 U.S.C. § 1746, I, Aric H. Wu, state as follows:

1. I am an attorney with the law firm of Cooley LLP, counsel for Defendants AppHarvest, Inc. ("AppHarvest" or the "Company"), Jonathan Webb, Loren Eggleton, and David Lee. I respectfully submit this declaration in support of Defendants' motion to dismiss Plaintiff's Second Consolidated Amended Complaint ("SAC"). I have personal knowledge of the facts set forth in this declaration and, if called upon, could testify truthfully and accurately thereto.

2. **Appendix A**, submitted solely for the Court's convenience, is a chart cataloging AppHarvest's risk warnings, which were disclosed in its filings with the U.S. Securities and Exchange Commission ("SEC"), press releases, and transcripts of calls with investors and analysts, and address Plaintiff's allegations in the SAC.

3. **Appendix B**, submitted solely for the Court's convenience, is a chart cataloging forward-looking statements challenged in the SAC, which are non-actionable for the reasons set forth in Defendants' briefing.

4. **Appendix C**, submitted solely for the Court's convenience, is a chart cataloging statements of puffery or corporate optimism challenged in the SAC, which are non-actionable for the reasons set forth in Defendants' briefing.

5. **Appendix D**, submitted solely for the Court's convenience, is a chart cataloging statements of opinion challenged in the SAC, which are non-actionable for the reasons set forth in Defendants' briefing.

6. **Appendix E**, submitted solely for the Court's convenience, is a chart cataloging accurate factual statements challenged in the SAC, which are non-actionable for the reasons set forth in Defendants' briefing.

7. **Appendix F**, submitted solely for the Court's convenience, is a chart cataloging the statements challenged in the SAC by topic.

8. Attached hereto as **Exhibit 1**<sup>1</sup> is a true and correct copy of a USDA article regarding Tomato Grades and Standards. It is publicly available at <https://www.ams.usda.gov/grades-standards/tomato-grades-and-standards>.

9. Attached hereto as **Exhibit 2** is a true and correct copy of AppHarvest's distribution agreement with Mastronardi Produce Limited titled, *Purchase & Marketing Agreement Exclusive Production AppHarvest, LLC*, dated March 28, 2019. It is publicly available at [https://www.sec.gov/Archives/edgar/data/1807707/000110465920132520/tm2032410d12\\_ex10-20.htm](https://www.sec.gov/Archives/edgar/data/1807707/000110465920132520/tm2032410d12_ex10-20.htm).

10. Attached hereto as **Exhibit 3** is a true and correct copy of AppHarvest's Analyst Day Presentation, which occurred on December 15, 2020.

11. Attached hereto as **Exhibit 4** is a true and correct copy of AppHarvest's Form 424B3, filed with the SEC on January 11, 2021.

12. Attached hereto as **Exhibit 5** is a true and correct copy of a transcript of a Yahoo! Finance interview with AppHarvest CEO Jonathan Webb, which occurred on January 19, 2021. The interview is publicly available at <https://www.yahoo.com/video/agtech-company-appharvest-debuts-produce-211649172.html>.

13. Attached hereto as **Exhibit 6** is a true and correct copy of AppHarvest's press release titled, *AppHarvest, a Pioneering Developer and Operator of Sustainable, Large-Scale Controlled Environment Indoor Farms, Becomes a Public AgTech Company*, and released

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<sup>1</sup> Exhibits are excerpted where appropriate and highlighted to facilitate the Court's review. All SEC filings are publicly available at <https://www.sec.gov/edgar>.

February 1, 2021. It is publicly available at <https://investors.appharvest.com/news-releases/news-release-details/appharvest-pioneering-developer-and-operator-sustainable-large>.

14. Attached hereto as **Exhibit 7** is a true and correct copy of a transcript of a Cheddar News interview with AppHarvest CEO Jonathan Webb and President David Lee, which occurred on February 1, 2021. The interview is publicly available at <https://cheddar.com/media/appharvest-stock-soars-on-farming-startup-s-first-trading-day>.

15. Attached hereto as **Exhibit 8** is a true and correct copy of a transcript of a TD Ameritrade interview with AppHarvest CEO Jonathan Webb, which occurred on February 1, 2021. The interview is publicly available at <https://www.youtube.com/watch?v=aZbJcUegH-k>.

16. Attached hereto as **Exhibit 9** is a true and correct copy of AppHarvest's Form 8-K, filed with the SEC on February 2, 2021.

17. Attached hereto as **Exhibit 10** is a true and correct copy of AppHarvest's Form S-1, filed with the SEC on February 10, 2021.

18. Attached hereto as **Exhibit 11** is a true and correct copy of AppHarvest's press release titled, *AppHarvest, Inc. Introduces First Quarter 2021 Outlook and Updates Full-Year 2021 Forecast*, and released on February 25, 2021. It is publicly available at <https://investors.appharvest.com/news-releases/news-release-details/appharvest-inc-announces-full-year-2020-financial-results>.

19. Attached hereto as **Exhibit 12** is a true and correct copy of AppHarvest's Form 8-K, filed with the SEC on February 25, 2021.

20. Attached hereto as **Exhibit 13** is a true and correct copy of AppHarvest's press release titled, *AppHarvest Acquires Flagship Morehead, Ky. Controlled Environment Agriculture Facility*, and released on March 1, 2021. It is publicly available at <https://investors.appharvest.com/news-releases/news-release-details/appharvest-acquires-flagship-morehead-ky-controlled-environment>.

21. Attached hereto as **Exhibit 14** is a true and correct copy of AppHarvest's Form S-1A, filed with the SEC on March 2, 2021.

22. Attached hereto as **Exhibit 15** is a true and correct copy of AppHarvest's Form 424B3, filed with the SEC on March 4, 2021.

23. Attached hereto as **Exhibit 16** is a true and correct copy of a transcript of a Benzinga interview with AppHarvest President David Lee, which occurred on March 4, 2021. The interview is publicly available at [https://www.youtube.com/watch?v=r3\\_xE-6XnWw](https://www.youtube.com/watch?v=r3_xE-6XnWw).

24. Attached hereto as **Exhibit 17** is a true and correct copy of AppHarvest's press release titled, *AppHarvest Announces First Harvest of Tomatoes on the Vine from High-Tech Morehead Farm Shipping to Grocery Stores*, and released on April 1, 2021. It is publicly available at <https://investors.appharvest.com/news-releases/news-release-details/appharvest-announces-first-harvest-tomatoes-vine-high-tech>.

25. Attached hereto as **Exhibit 18** is a true and correct copy of AppHarvest's Form S-8, filed with the SEC on April 6, 2021.

26. Attached hereto as **Exhibit 19** is a true and correct copy of AppHarvest's press release titled, *AppHarvest Announces Solid Q1 2021 Results in First Quarter as Publicly Traded Company*, and released on May 17, 2021. It is publicly available at <https://investors.appharvest.com/news-releases/news-release-details/appharvest-announces-solid-q1-2021-results-first-quarter>.

27. Attached hereto as **Exhibit 20** is a true and correct copy of AppHarvest's Form 10-Q for Q1 2021, filed with the SEC on May 17, 2021.

28. Attached hereto as **Exhibit 21** is a true and correct copy of AppHarvest's Q1 2021 Earnings Presentation, which occurred on May 17, 2021.

29. Attached hereto as **Exhibit 22** is a true and correct copy of AppHarvest's Form 8-K, filed with the SEC on May 17, 2021.

30. Attached hereto as **Exhibit 23** is a true and correct copy of a transcript of AppHarvest's Earnings Call, which occurred on May 17, 2021.

31. Attached hereto as **Exhibit 24** is a true and correct copy of a transcript of a Yahoo! Finance interview with AppHarvest CEO Jonathan Webb, which occurred on May 17, 2021. The interview is publicly available at <https://news.yahoo.com/appharvest-ceo-staying-cost-competitive-150547271.html>.

32. Attached hereto as **Exhibit 25** is a true and correct copy of a transcript of a Cheddar News interview with AppHarvest CEO Jonathan Webb, which occurred on May 17, 2021. The interview is publicly available at <https://cheddar.com/media/indoor-farming-biz-appharvest-delivered-sales-in-first-earnings-as-public-company>.

33. Attached hereto as **Exhibit 26** is a true and correct copy of a Cowen Equity Research Report titled, *Yields Come in Above Expectations; Bumps Up LT Profitability Targets*, and released on May 17, 2021.

34. Attached hereto as **Exhibit 27** is a true and correct copy of a transcript of a Stephens, Inc. interview with AppHarvest President David Lee, which occurred on May 25, 2021. The interview is publicly available at <https://kvgo.com/stephens-food-ag/appharvest-may-2021>.

35. Attached hereto as **Exhibit 28** is a true and correct copy of a Transcript of an Industry Focus podcast interview with AppHarvest CEO Jonathan Webb, which occurred on May 26, 2021. The interview is publicly available at <https://www.fool.com/podcasts/industry-focus/2021-05-26-wildcard-an-interview-with-founder>.

36. Attached hereto as **Exhibit 29** is a true and correct copy of a transcript of a Seeking Alpha interview with AppHarvest CEO Jonathan Webb, which occurred on June 3, 2021. The interview is publicly available at <https://www.youtube.com/watch?v=rN2ZcybtxFE>.

37. Attached hereto as **Exhibit 30** is a true and correct copy of AppHarvest's Form S-1A, filed with the SEC on Jun. 4, 2021.

38. Attached hereto as **Exhibit 31** is a true and correct copy of AppHarvest's Form 424B3, filed with the SEC on June 9, 2021.

39. Attached hereto as **Exhibit 32** is a true and correct copy of AppHarvest's Form 4 for Jeffrey Ubben, filed with the SEC on June 14, 2021.

40. Attached hereto as **Exhibit 33** is a true and correct copy of a Barclays Equity Research Report titled, *AppHarvest, Inc. – Harvest for the World – Initiate at OW*, and released on June 16, 2021.

41. Attached hereto as **Exhibit 34** is a true and correct copy of a Cowen Equity Research Report titled, *Announces New Facilities for Leafy Greens and Strawberries*, and released on June 22, 2021.

42. Attached hereto as **Exhibit 35** is a true and correct copy of AppHarvest's press release titled, *AppHarvest Announces Q2 2021 Results, Plans for New Holding Company Structure to Capitalize on Growing Global Need for Controlled Environment Agriculture, Announces Non-Binding LOI for JV with Mastronardi Produce to Expand Farm Network, and Reaffirms Long-Term 2025 Outlook*, and released on August 11, 2021. It is publicly available at <https://investors.appharvest.com/news-releases/news-release-details/appharvest-announces-q2-2021-results-plans-new-holding-company>.

43. Attached hereto as **Exhibit 36** is a true and correct copy of AppHarvest's Form 10-Q for Q2 2021, filed with the SEC on August 11, 2021.

44. Attached hereto as **Exhibit 37** is a true and correct copy of AppHarvest's Q2 2021 Earnings Presentation, which occurred on August 11, 2021.

45. Attached hereto as **Exhibit 38** is a true and correct copy of transcript of AppHarvest's Earnings Call, which occurred on August 11, 2021.

46. Attached hereto as **Exhibit 39** is a true and correct copy of a Barclays Equity Research Report titled, *AppHarvest, Inc. – First Look: APPH 2Q21: Not as expected*, and released on August 11, 2021.

47. Attached hereto as **Exhibit 40** is a true and correct copy of a Cowen Equity Research Report titled, *Execution Issues Weigh on 2Q and '21 Guide; Remain Outperform; PT to \$14*, and released on August 11, 2021.

48. Attached hereto as **Exhibit 41** is a true and correct copy of a Barclays Equity Research Report titled, *AppHarvest, Inc. – Growing will take its time – PT to \$13*, and released on August 12, 2021.

49. Attached hereto as **Exhibit 42** is a true and correct copy of AppHarvest's Form 4 for David Lee, filed with the SEC on August 17, 2021.

50. Attached hereto as **Exhibit 43** is a true and correct copy of AppHarvest's Form 4 for Loren Eggleton, filed with the SEC on August 20, 2021.

51. Attached hereto as **Exhibit 44** is a true and correct copy of an Oppenheimer Equity Research Report titled, *APPH: Initiating Coverage at Outperform with \$10 PT*, and released on August 25, 2021.

52. Attached hereto as **Exhibit 45** is a true and correct copy of AppHarvest's press release titled, *AppHarvest Announces Q3 2021 Results and Second Growing Season Off to Solid Start*, and released on November 10, 2021. It is publicly available at <https://investors.appharvest.com/news-releases/news-release-details/appharvest-announces-q3-2021-results-and-second-growing-season>.

53. Attached hereto as **Exhibit 46** is a true and correct copy of AppHarvest's press release titled, *AppHarvest announces Q4 and FY2021 results exceed updated guidance as company expects to quadruple its farms and more than double net sales by end of 2022*, and

released on February 24, 2022. It is publicly available at <https://investors.appharvest.com/news-releases/news-release-details/appharvest-announces-q4-and-fy2021-results-exceed-updated>.

I declare under penalty of perjury that the foregoing is true and correct. Executed in New York, New York on this 23rd day of September 2022.

/s/ Aric H. Wu  
Aric H. Wu